494, where the plaintiff was injured by the bursting of a boiler manufactured by the defendant, it was admitted that the defect in the boiler was a hidden one which could not have been discovered by the intermediate persons with ordinary care. In *Curtin* v. *Somerset* (1891) 140 Pa. St. 70, a contractor who had built a hotel veranda was held not liable to one injured by reason of its imperfect construction. The plaintiff insisted that since the hotel proprietor was not responsible the contractor must be, but the court refused so to regard it.

A third suggestion is that of Sir Frederick Pollock. Torts, 5th ed. (1897) 514. The cases of *Winterbottom* v. *Wright* and *Longmeid* v. *Halliday* he thinks prove no more than that "If A breaks his contract with B (which may happen without any personal default in A or A's servants) that is not of itself sufficient to make A liable to C, a stranger to the contract, for consequential damage." But if "bad faith or misfeasance by want of ordinary care" is shown, " or it may be if the chattels in question had been of the class of imminently dangerous things which a man deals with at his peril," the result will be different. Applying this rule, we find that in the step ladder case, where a recovery was allowed, both bad faith and want of ordinary care were shown, whereas in *Losee* v. *Clute* the defect was of a nature extremely difficult to guard against. In *Heizer* v. *Kingland Co.* (1892) 110 Mo. 605, where the plaintiff was not permitted to recover against the manufacturer of a defective threshing machine, the court intimated that the result would have been different if the defendant had known or should have known of the existence of the defect. There was proved neither bad faith nor want of ordinary care. In *Teal* v. *Mining Co.* the defendant carrier knew that the car which it transferred to the plaintiff's employer was unsafe by reason of a defective brake wheel. There was therefore want of ordinary care if not positive bad faith. In *Sweeney* v. *Rozell* (Sup. Ct. App. Term, 1900) 64 N. Y. Supp. 721 the defendant, under a contract with the plaintiff's master, furnished hoisting appliances to be used in storing away bales of hay sold by the defendant. One of the ropes used was frayed and unfit for the purpose; it broke and a bale of hay fell and injured the plaintiff. The court held that the defendant owed the plaintiff the duty of using ordinary care to see that the appliances furnished were reesonably safe; but that it was not enough to enable the plaintiff to recover for him to show that the rope was frayed and imperfect—it must also appear that the defendant had omitted to use ordinary care to discover its condition.

On the whole therefore, Sir Frederick Pollock's statement of the rule seems to furnish the best possible explanation of the tendency of the modern cases, though apparently it is opposed to the spirit, at least, of the decisions in *Winterbottom* v. *Wright* and *Curtin* v. *Somerset*.

LOCATION OF CHATTELS AS A TERM IN AN INSURANCE POLICY.—A statement of location in an insurance policy is capable of three

constructions. It may be (1) a mere description of the thing insured, that is, it may indicate what thing is insured, or (2) a description of the risk, or (3) a warranty. The first construction ought to be made only when the context clearly shows an intention to point out the thing to be insured, since place is ordinarily material to the risk. *Boynton* v. *Ins. Co.* (1853) 16 Barb. 254. Yet if the chattel is in ordinary use at varying locations, as a horse, *Mills* v. *Farmers Ins. Co.* (1875) 37 Iowa 400, or a vehicle, *Niagara Ins. Co.* v. *Elliott* (1887) 85 Va. 692, the location merely identifies the insured article. In *Lyons* v. *Ins. Co.* (1881) 13 R. I. 347 the risk was on furniture "contained in" a certain building. These words of location were deemed to indicate the goods insured and recovery was allowed although they were destroyed in another house, to which they had been moved. In reversing this judgment, the court reached the other extreme and held the statement of place a warranty (1883) 14 R. I. 109. The implication of a warranty is open to objection. If the goods had not been in the described place when the policy was issued the risk would not have attached. This would not result from a breach of condition, since on principle a condition presupposes an obligation. Langdell, Summ. of Cont. § 28; *cf.* Holmes, Common Law, 330, 331. Further, if we treated this as a condition, the great body of cases, which hold that a temporary change of location, for ordinary and contemplated purposes—as, for instance, sending furniture to a repairer—temporarily suspends the policy, cannot be explained. Joyce, Ins. § 2239, note. A temporary suspension from temporary breach is inconceivable. It seems that in these decisions the location is descriptive of the risk taken. A policy on "buildings and hacks contained therein" cannot be avoided by the insurer when the hack is removed for repairs, but the loss would fall on the insured. *Bradbury* v. *Companies* (1888) 80 Me. 396. This should be the interpretation of locality as to the ordinary insured interest in chattels. When the insured article has a different location, there is nothing to which the risk attaches. So in the New York standard policy the risk is taken on property "while located and contained as described herein, and not elsewhere." This clearly meets the intention of the parties.

That there may be added an express warranty of no removal can in no way change the effect of the statement of location as descriptive of the risk. The warranty and the extent of the risk are distinct. For example, while furniture is being repaired, the insurer can not avoid his policy since, interpreting the warranty most strongly against the insurer, the warranty means no removal save that compelled by the usual and contemplated demands. At the same time the furniture would not be within the description of the risk and consequently at the risk of the owner. It is true that numerous cases in western courts hold the insurer liable in case of loss while the goods are temporarily removed, but these seem to be based on no principles of the ordinary construction of contracts. See cases cited in *Noyes* v. *Ins. Co.* (1885) 64 Wis. 415.

In a recent case in Ohio, *Ohio Farmers Ins. Co.* v. *Burget* (1901) 61 N. E. 712, personal property was insured contained in house A, with a condition of no removal. Removal was made to house B, then to house C, consent to the last removal being obtained. It was held that the avoidance intended by the warranty was only during the continuance of the forbidden hazard. This is patently opposed to the express terms of the policy. The warranty added nothing to the contract. The court justified its decision on the ground that a temporary suspension by temporary change of location must rest on the broad principle that a condition is available only during the existence of the hazard forbidden. It felt bound by these decisions on temporary suspension, and advanced no principle. As has been shown, the cause of temporary suspension lies in the non-existence of subject matter within the risk. If a warranty be broken, the insurer should be allowed the advantage of it at any time unless there has been a waiver. *Thomson v. Weems* (H. L. 1884). L. R. 9 A. C. 671. The principal case finds some support. Joyce, Ins. § 2289. *Contra*, see *Imperial Ins. Co.* v. *Jackson* (1892) 151 U. S. 542, and *Kyte* v. *Commercial etc. Ins. Co.* (1889) 149 Mass 116.

ATTEMPTED GIFT OF AN ACCOUNT IN A SAVINGS BANK, TO TAKE EFFECT UPON THE DEATH OF THE SUPPOSED DONOR.—Mrs. Roche, a widow, had a deposit in the Hoboken Bank for Savings. Intending that her nephew Schwoon should be provided for after her death, she went to the bank with him and had her account changed to read, "Roche or Schwoon in account with the Hoboken Bank for Savings, payable to either or survivor," at the same time signing a contract with the bank, to the effect that she and Schwoon were to be co-partners in the ownership of the money. Mrs. Roche kept the bank book and continued to draw small sums of money for her own use. Several months before her death she handed the book to a friend, directing him to deliver it to Schwoon after her death. After her decease one Seitz claimed the fund as legatee and the bank impleaded the parties. The court directed that the money be paid to Schwoon on the ground that putting the money into a joint account with right of survivorship, coupled with the fact that the pass book was delivered to a third person "for the donee," was a perfect declaration of trust. *Hoboken Bank for Savings* v. *Schwoon* (N. J. Ch. 1901) 50 Atl. 490.

While it would seem that the intention of the parties could be effectuated by calling this a gift, such a result, though reached in the case of *Howard* v. *Savings Bank* (1868) 40 Vt. 597, would be erroneous. The delivery of the bank book to the third party was not made in anticipation of death, hence on the very facts of the case, the idea of a gift *mortis causa* is negatived. Nor is there a valid gift *inter vivos*, for Mrs. Roche retained title to and dominion over the fund, whereas, to establish a gift, such title and dominion must be passed to the donee. *Savings Bank* v. *Merriam* (1895) 88 Me. 146. Schwoon was not to receive the book, till after the death of the donor, making the gift testamentary in character and void